We therefore dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Gibb & Co.; Cheang Lee & Ong.*

LEE KAM WAH & ANOR. v. SOU KAH PANG

[O.C.J. (Abdul Hamid J.) September 17, 1969]

[Kuala Lumpur — Civil Suit No. 1030 of 1966]

Landlord and Tenant — Rent — Claim for rent paid in excess — Subletting — "Tenant" and "landlord" — Definition of — Standard rent — Control of Rent Ordinance, 1956, ss. 3, 6 & 15.

The plaintiffs claimed certain sums as rents paid in excess inclusive of deposits. The first plaintiff stated that he was a sub-tenant of a portion of the premises in question by virtue of a written agreement made on November 1, 1957 at a rental of $85 per month. The defendant disputed this and alleged that the first plaintiff became his tenant under two written agreements dated November 8, 1960 and November 1, 1962 respectively. The first plaintiff did not produce any written agreement to support his statement, except 40 rent receipts issued by the defendant. On examination of these receipts, it was found that one set of receipts for the months December 1957 to November 1968 were in favour of another person and the other set for December 1960 to January 1965 were in the first plaintiff's name. The second plaintiff was let a portion of the said premises by the defendant with effect from September 1, 1959 at a rental of $80 per month.

The plaintiffs made separate applications to the Rent Assessment Board and two consent orders were made by the board on March 19, 1966 fixing the rents of the plaintiffs' respective portions of the said premises at $20.90 per month.

The question for the decision was what rent or rents the defendant could lawfully receive under the provisions of the Control of Rent Ordinance, 1956.

Held: to determine the maximum recoverable rent, it was necessary to know what the standard rent was. In this case the evidence showed that the said premises were let for the first time separately and as such section 6(1)(b) applied, the rents of $85 and $80 respectively were therefore standard rents in respect of those separate premises. In the circumstances, the maximum recoverable rent which the defendant might lawfully receive would be the maximum rent calculated on the basis of section 6(1)(b). Therefore the rents which the defendant received were not in excess of the lawful rent allowed under the Ordinance.

Cases referred to:-

(1) *Ho Choon Chee* v. *Leong Yee Sin* [1964] M.L.J. 44.

(2) *Chong Fong Kooi* v. *Kong Gim Hem* [1959] M.L.J. 243, C.A.

(3) *Tan Ah Seah* v. *Teo Kai Min & Ors.* [1954] M.L.J. 50.

CIVIL SUIT.

Morris Edgar for the plaintiffs.

Heng Cheng Swee for the defendant.

Cur. Adv. Vult.

Abdul Hamid J.: The first plaintiff is claiming a sum of $5,035.10 as rent paid in excess inclusive of two months' deposit. The second plaintiff is claiming a sum of $3,765.50 also as rent paid in excess inclusive of one month's deposit.

The first plaintiff states that he was a sub-tenant of a portion of premises No. 92, Brickfields Road, Kuala Lumpur (hereinafter referred to as "the said premises") by virtue of a written agreement on the first day of November, 1957 at a rental of $85 per month. The defendant disputes this fact and alleges that the first plaintiff became the tenant of that portion of the premises let to him under two written agreements (Ex. D. 2 and D. 3) dated 8th November, 1960 and 1st November, 1962 respectively. The first plaintiff does not produce any written agreement to support his allegation. He produces however, 40 rent receipts issued by the defendant. On examination of these receipts, I find that one set of receipts for the months 1st December, 1957 until 9th November, 1960 were issued in favour of Weng Wah and the other set of receipts for the months 14th December, 1960 till 12th January, 1965 were issued in favour of the first plaintiff. The second plaintiff was let a portion of the said premises by the defendant with effect from the first day of September, 1959 at a rental of $80 per month.

The plaintiffs made separate applications to the Rent Control Assessment Board and two consent orders were made by the board on the 19th day of March, 1966 fixing the rents of the plaintiffs' respective portions of the said premises at $20.90 per month.

It is not disputed that the defendant was at all material times the owner of the said premises. However, on 13th March, 1965 the defendant transferred the ownership of the said premises to his wife, Foo Kwee Fong. The plaintiffs allege that after the transfer of the ownership, the defendant held out as chief tenant.

Counsel for the plaintiffs submits that the defendant was the chief tenant and the plaintiffs were sub-tenants of the defendant and section 6 of the control of Rent Ordinance, 1956 does not apply. It is contended that the plaintiffs can legally recover a sum in excess of the rent which may lawfully be received by the defendant. Mr. Heng, counsel for the defendant submits that the plaintiffs were tenants and not sub-tenants. He further submits that the portions let out to the plaintiffs (hereinafter referred to as "the said portions") were let out separately for the first time and that these rentals were standard rent.

It is abundantly clear from the evidence that the defendant was the owner of the said premises and, it is also not in dispute that certain portions of the said premises were let separately to the plaintiffs. There is no evidence to show whether these portions were let for the first time or otherwise. In the absence of any evidence to the contrary, it is only reasonable to assume that these portions were let for the first time. It is, I think, pertinent to consider whether the said portions were let or sub-let. For sub-letting to exist, there must necessarily be a tenant or a chief tenant/sub-tenant relationship. The question is was the defendant a tenant or a chief tenant? For the defendant to be a tenant or a chief tenant, there must first be a tenant/landlord relationship between the defendant and another. There is no such thing here no matter what word is used to describe the defendant. The court is dealing with facts and not fallacies. The fact that the words "chief tenant" were used in the agreement to describe the defendant, does not in reality make him other than the owner of the said premises who lets separately certain portions of the said premises.

As regards the law, it is explicitly provided that —

"a tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord". [Sub-section (4) of section 3].

The word "tenant" is defined to include sub-tenant and the word "landlord" is defined to include "tenant" in a sub-tenancy. In the instant case, the court has to consider what rent or rents the defendant could lawfully receive under the provisions of the Ordinance. Section 3 sub-section (1) of the Ordinance provides that —

"it shall be unlawful for any landlord to receive rent in respect of any tenancy of premises in excess of the maximum recoverable rent of such premises as determined in accordance with the provisions of the Ordinance".

The provisions relating to maximum recoverable rent are contained in section 6 and section 15. Section 15 is applicable purely to cases of sub-letting. Hence, it cannot possibly be applied to the present case. The only other section is section 6. Section 6(1)(a) cannot apply in this case as the order of the Rent Assessment Board was only made on 19th March, 1966. It is established law that the order of the board can only take effect from the date on which it was made. The board has no power to make any order relating to the amount of rent retrospective. [See *Ho Choon Chee* v. *Leong Yee Sin*[1] and *Chong Fong Kooi* v. *Kong Gim Hem*[2]]. The amount of the maximum recoverable rent therefore, has to be determined in accordance with section 6(1)(b). It reads —

"Subject to the provisions of sub-section (3) of this section, the maximum recoverable rent of any premises shall —

(b) Where there has been no order of the Board fixing the rent of the premises, the standard rent increased to the extent following, ..."

To determine the maximum recoverable rent, it is necessary to know what the standard rent is. "Standard rent" is defined to mean —

"the rent at which the premises were let on the 25th day of September, 1948 or in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the 25th day of September, 1940".

The definition refers to "premises", and "premises" is defined to include "any part of any premises let or sub-let separately". It is significant to note that there may be separate parts of any premises and each of these separate parts is premises within the meaning assigned to it in the Ordinance.

In the present case, the evidence clearly shows that the said portions were let for the first time separately and as such, I am of the opinion that section 6(1)(b) applies. The rents of $85 and $80 respectively were therefore standard rents in respect of these separate premises. In the circumstances, the maximum recoverable rent that the defendant may lawfully receive would be the maximum rent calculated on the basis of section 6(1)(b). In that event, it is clear that the rents which the defendant received were not in excess of the lawful rent allowed under the Ordinance.

In *Tan Ah Seah* v. *Teo Kai Min & Ors.*[3] Spenser Wilkinson J. referring to the definition of "standard rent" said —

"It appears to me that the wording of the definition of 'standard rent' when read together with the definition 'premises' makes it clear that the standard rent of a part of a house sub-let may be assessed differently from the standard rent of the whole because, if there is no order of the Board the first letting of each part may have occurred at different times and at different rates".

It is true that the law has somewhat changed since that case has been decided. It is clear, however, that in the 1948 Ordinance, there was no provision similar to section 15 of the 1956 Ordinance. The legal significance of the provisions of section 15 is that it governs the determination of maximum recoverable rent in cases of sub-letting only, while the letting of any part of any premises separately is governed by section 6.

It is quite unnecessary to decide as a fact whether the first plaintiff became the tenant in 1957 or in 1960. It makes little or no difference whether he became a tenant after the first tenant or whether he was the first tenant of the premises let to him. The rent of $85 was, in the light of the definitions of "standard rent" and "premises", standard rent of that portion of the said premises occupied by the first plaintiff. Similarly the rent of $80 was the standard rent in respect of the portion let to second plaintiff.

For these reasons, I hold that the plaintiffs had not paid excess rent to the defendant from the dates they first occupied the said portions of the said premises until 13th March, 1965 when the ownership of the said premises was transferred to Madam Foo Kwee Fong. The plaintiffs allege that the defendant held himself out as chief tenant. The defendant, however, says that he only collected rents for and on behalf of his wife. To my mind, on the evidence, I cannot infer that the defendant has held himself out as chief tenant. There is no evidence of any tenancy existing between the defendant and his wife. Thus I find that the defendant was not between 13th March, 1965 and 19th March, 1966, the plaintiffs' chief tenant.

The Rent Assessment Board's order was effective from 19th March, 1966 and thereafter any rents paid by the plaintiffs in excess are recoverable. By the 19th March, 1966, the defendant was however, no longer the owner of the said premises and the plaintiffs had knowledge of this. In my view, the claim for return of the deposit and for any excess of rent paid from that date, if any, should be made against the defendant's wife. It appears that the first plaintiff had not apparently paid any rent for the period between 1st February, 1965 and 30th September, 1966, (See A1 — statement of accounts attached to statement of claim), and that the second plaintiff had not paid rent for period between 1st April, 1965 and 30th September, 1966. (See A2 — statement of accounts attached to statement of claim).

In the circumstances of this case and for the reasons which I stated earlier, I am not satisfied that the plaintiffs have established their claim. I therefore dismiss the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Morris Edgar & Co.; Heng Cheng Swee & Co.*